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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	081589-0306133	1141

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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12/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,643

Applicant(s)

MASSEY ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008 and 04 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 32-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the elongated spacer having a distal end that engages the wooden insert (claim 40) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on May 14, 2007 is acknowledged. The traversal is on the ground(s) that claim 40 has been amended to remove the recitation "a hardware component disposed in the wooden insert at the opening of the metallic frame". Therefore, said recitation can no longer be used as the basis for maintaining the restriction requirement. This is not found persuasive because the recitations of the interior flange and the exterior flange in the subcombination claim 42 are not required by the combination claim 23.

The requirement is still deemed proper and is therefore made FINAL.

Claims 22-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 14, 2007.

Claim Rejections - 35 USC § 112

Claims 1-21, 32-39, 41-43 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "disposed opposite the outer edge of the passive door" on line 6 of claim 1 render the claims indefinite because it is unclear if the interior portion or the side portion is disposed opposite the outer edge of the passive door. Recitations such as "a longitudinal axis" on line 2 of claim 5 render the claims indefinite because it

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is unclear what element of the invention includes the axis to which the applicant is referring. Recitations such as "the exterior portion meets said exterior flange" on line 7 of claim 32 render the claims indefinite because it is unclear how the exterior portion can meet the exterior flange since it appears that the exterior flange comprises a portion of the exterior portion. Recitations such as "thin" on line 2 of claim 34 are relative terms whose meaning cannot be readily ascertained by one with ordinary skill in the art and are not defined by the specification. Recitations such as "a thermal break" on lines 1-2 of claim 35 render the claims indefinite because it is unclear whether or not the applicant is referring to the gasket set forth above. Recitations such as "the spacer" on line 2 of claim 41 render the claims indefinite because it is unclear to which of the plurality of spacers set forth above the applicant is referring. Recitations such as "opposite to the outer end of the passive door" on line 7 of claim 42 render the claims indefinite because it is unclear if the applicant is referring to the side portion or to the exterior portion. Recitations such as "when said interior . . . of the passive door" on lines 4-5 of claim 43 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of an astragal assembly or the combination of an astragal assembly and a passive door. The preamble of claim 42 implies the subcombination while the positive recitation of the passive door implies the combination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21, 39 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. (6491326) in view of Hendrickson et al. (US 6684571) and Davis (US 3364624). Massey et al. discloses an astragal assembly 27 for attachment to a passive door 17 having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending from the exterior surface to the interior surface, comprising: a frame 28 having an exterior portion 83, an interior portion 84 spaced from and opposed to the exterior portion, and a side portion 45 extending between the exterior portion and the interior portion disposed opposite the outer edge of the passive door when the astragal assembly is affixed thereto, a gasket 7 interconnected between said exterior portion and said side portion, an interior flange (labeled below) extending away from where said interior portion meets said side portion to engage the interior surface of the passive door when the astragal assembly is affixed thereto, and an exterior flange (labeled below) opposite said interior flange and extending away from where said exterior portion is connected to said gasket 7 to engage the exterior surface of the passive door when the astragal assembly is affixed thereto, wherein an elongated open channel is defined in the frame with sides formed by the exterior portion and the interior portion and a base formed by the side portion, the elongated open channel having an opening extending between the exterior portion and the interior portion and opposed to the side portion; and an insert 25 retained within the elongated open channel in the frame, a stop (labeled below), a second gasket 31, a

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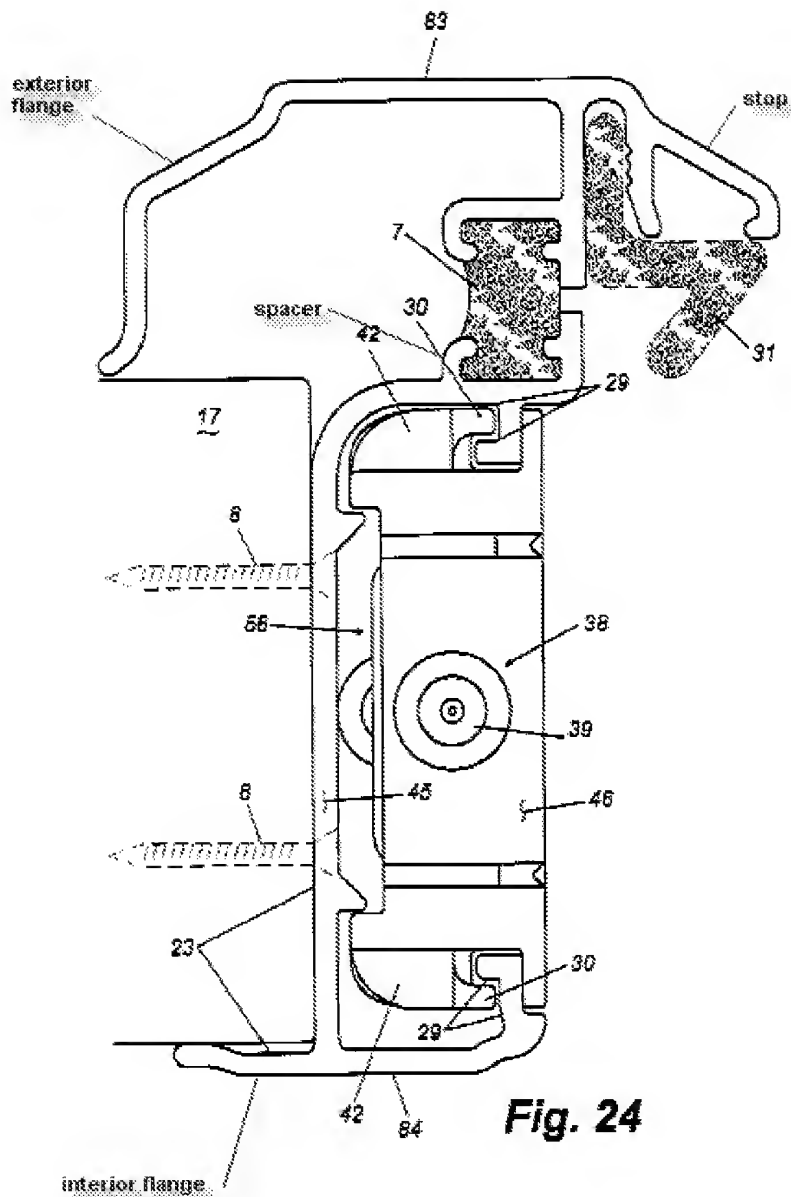
thermal break 7, hooks 29, a strike plate 21. Massey et al. is silent concerning a spacer and an wooden insert.

However, Davis, in figure 4, discloses an astragal 15" comprising a spacer 28" having a distal end 60" protruding outwardly from a major surface (not numbered, but shown in figure 4) of a side portion in a direction that is substantially parallel to an interior flange 20" and substantially perpendicular to said major surface.

It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Additionally, Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al. with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.



Claims 32-35, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis. Massey et al. discloses an astragal 27 comprising: a frame 28 including an exterior portion 83, an exterior flange (labeled above) extending from a first side of said exterior portion, and a stop (labeled above)

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extending from a second side of said exterior portion opposite to the first side, an interior portion 84 spaced from and opposed to the exterior portion, an interior flange (labeled above) extending from said interior portion opposite from and substantially parallel to said exterior flange, and a side portion 45 extending between where the exterior portion meets said exterior flange and where the interior portion meets said interior flange, a gasket 7 interconnected between said side portion and said exterior portion, a fastening formation 24 disposed on a major surface of the side portion, and

an insert member 25 retained substantially within a channel in the formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface for attachment to hardware;

wherein the exterior portion includes a hollow section (not numbered, but defined between the exterior flange and the thermal break 7) and a hook 29 extending into the channel that retains the insert member;

wherein the interior portion 84 includes a thin wall with a hook 29 extending into the channel that retains the insert member;

wherein the side portion includes a thermal break 7;

further comprising a strike plate 21 secured to the insert member;

wherein the frame 28 has a generally U-shaped cross section, with the side portion including a fastening formation 24 that attaches to a door edge such that the U-shaped cross section faces outward from the door edge.

Massey et al. is silent concerning a spacer that extends away from the channel.

However, Davis discloses an astragal 15", a spacer 28" having a distal end 60" protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 20".

It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis as applied to claims 32-35, 37 and 38 above, and further in view of Hendrickson et al.

Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al., as modified above, with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Claims 40, 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Hendrickson et al. Massey et al. discloses an astragal assembly 27 for attachment to a passive door 17 having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending between the exterior surface and the interior surface, the assembly comprising:

a metallic frame 28 fixable to the exterior surface and the interior surface of the passive door, the metallic frame having an exterior portion 83 adjacent to the exterior

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surface of the passive door when the astragal assembly is affixed thereto, an interior portion 84 adjacent to the interior surface of the passive door when the astragal assembly is affixed thereto, a side portion 45 extending between the exterior portion and the interior portion of the metallic frame and opposite to the outer edge of the passive door when the astragal assembly is affixed to the passive door, a gasket 7 interconnected between the exterior portion and the side portion, an interior flange (labeled below) extending from where said interior portion meets said side portion to engage the interior surface of the passive door when the astragal assembly is affixed to the passive door, and an exterior flange (labeled below) extending from where said exterior portion is connected to said gasket to engage the exterior surface of the passive door when the astragal assembly is affixed to the passive door, the interior and exterior flanges spaced apart for accommodating an outer edge of the passive door therebetween, the interior portion, the exterior portion, and the side portion forming an opening in the metallic frame which faces away from the outer edge of the passive door when the astragal assembly is affixed thereto;

an insert 25 disposed in the metallic frame between the interior portion, the exterior portion, and the side portion thereof; and

at least one elongated spacer 43 extending directly from said side portion and having a distal end that engages said insert, said at least one spacer maintaining said wooden insert in position within said opening;

further comprising a hardware component 46 disposed in the insert at the opening in the metallic frame;

wherein the interior flange and the exterior flange extend substantially perpendicular to a major surface of the side portion. Massey et al. is silent concerning a wooden insert.

However, Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al. with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Hendrickson et al. as applied to claims 40, 46 and 48 above, and further in view of Davis. Massey et al., as modified above, is silent concerning an outer spacer.

However, Davis discloses an astragal 15" comprising an outer spacer 28" having a distal end 60" protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 20".

It would have been obvious to one of ordinary skill in the art to provide Massey et al., as modified above, with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis. Massey et al. discloses an astragal assembly 27 usable with an active door 18 and a passive door 17 having an exterior surface, an

interior surface opposite to the exterior surface, and an outer end disposed between the exterior surface and the interior surface, the assembly comprising:

a frame 28 including an interior portion 84, an exterior portion 83 spaced apart from and opposed to the interior portion, a side portion 45 extending between the interior portion and the exterior portion opposite to the outer end of the passive door when the astragal assembly is attached thereto, a gasket 7 interconnected between the exterior portion and the side portion, an interior flange (labeled below) extending from where the interior portion meets the side portion to engage the interior surface of the passive door when the astragal assembly is attached thereto, an exterior flange (labeled below) extending from where the exterior portion is connected to said gasket to engage the exterior surface of the passive door when the astragal assembly is attached thereto, a channel formed by the exterior portion, the interior portion, and the side portion of the frame, and a door stop (labeled below) extending from the exterior portion of the frame on the opposite side from where the exterior flange is located, said door stop for engaging the active door when the astragal assembly is attached to the passive door;

an insert member 25 disposed in the channel and having a surface exposed to the active door when the astragal assembly is attached to the passive door;

wherein the interior portion and the exterior portion extend away from the outer end of the passive door when the astragal assembly is affixed thereto, and said side portion is disposed opposite the outer end of the passive door when said interior and exterior flanges of the frame are disposed on the interior and exterior surfaces of the passive door, respectively;

the frame 28 is metallic. Massey et al. is silent concerning a spacer.

However, Davis discloses an astragal 15" comprising at least one spacer 28" having a distal end 60" protruding from a major surface of a side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to an interior flange 20".

It would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Davis, so as to be able to adjust the position of the astragal to accommodate different door dimensions.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. in view of Davis as applied to claims 42 and 43 above, and further in view of Hendrickson et al.

Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al., as modified above, with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Response to Arguments

Applicant's arguments, filed October 17, 2008, have been fully considered but they are not persuasive.

The applicant's comments concerning Selzer are moot in view of the new grounds of rejection.

Regarding the applicant's comments concerning Hendrickson et al., the examiner respectfully disagrees. Hendrickson et al. discloses placing a wooden insert 76a into a plastic frame 32. The use of the wooden insert 76a is to match the interior trim 17 of the frame 32. One of ordinary skill in the art would be motivated to provide Massey et al. with a wooden insert, as taught by Hendrickson et al., so that the wooden insert would match the door frame interior trim which is commonly made from wood. Additionally, Hendrickson et al. discloses snap fitting the insert 76a into a plastic frame which could also be easily accomplished with the plastic frame construction of Massey et al. Finally, the rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as to why the modification would have been obvious, the applicant's arguments are not persuasive.

With respect to the applicant's comments concerning claims 32-35, 37 and 38, the examiner respectfully disagrees. Claim 32 only requires the outer surface of the insert member be capable of being attached to "hardware". Clearly a bolt or screw could be attached to the outer surface of the insert member of either Massey et al. or Hendrickson et al. Additionally, figure 1 of Massey et al. clearly shows a strike plate 21 secured to the insert member.

With respect to the applicant's comments concerning claims 40, 46 and 48, the examiner respectfully disagrees. Massey et al. discloses a spacer 43.

With respect to the applicant's comments concerning claim 46, the examiner respectfully disagrees. As shown in figure 2 of Massey et al., the insert 25 includes two flanges which are inserted into respective channels of the hardware component 46. Thus, a portion of the hardware component 46 is disposed between the flanges of the insert and, therefore, the hardware component is received in the insert 25.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634